In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ———, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ARIZONA, DEFENDANT

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America respectfully asks leave of the Court to file its complaint against the State of Arizona submitted herewith.

JOHN N. MITCHELL,
Attorney General.
ERWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

401-417—70——1

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COMPLAINT

The United States of America, plaintiff, alleges as follows:

For a First Cause of Action:

I

This action states a controversy between the United States and the State of Arizona; this Court accordingly has original jurisdiction under Article III, Section 2 of the Constitution of the United States; see, also, 28 U.S.C. 1251(b)(2).

II

The United States brings this action to vindicate the supremacy of federal law. It seeks to enjoin the State of Arizona from enforcing provisions of its constitution and statutes which are contrary to and incon-

sistent with the Voting Rights Act of 1965, 79 Stat. 437, 42 U.S.C. (Supp. V) 1973–1973p, as amended by the Voting Rights Act Amendment of 1970, 84 Stat. 314.

III

Under Arizona law, registration is a prerequisite for voting in all elections. Section 16–102, Arizona Revised Statutes. The registration of voters is carried out by agents of the state.

IV

Under Section 16–101(A)(4) of the Arizona Revised Statutes, an applicant may not register to vote unless he is able to read the Constitution of the United States in the English language. Section 16–101 (A)(5) of the Arizona Revised Statutes provides that an applicant must be able to write his name as a prerequisite to registration.

V

Section 201 of Title II of the Voting Rights Act of 1965, as amended, took effect upon enactment on June 22, 1970, and provides for the suspension of literacy tests until August 6, 1975, in all states and counties not subject to the provisions of Section 4(a) of the Voting Rights Act of 1965. Yuma County is the only county of Arizona subject to Section 4(a) of such Act.

VI

The continued enforcement, prior to August 6, 1975, of Sections 16-101(A)(4) and (5) of the Revised Statutes of Arizona directly conflicts with Section 201 of the Voting Rights Act of 1965, as amended, and is thus unlawful under Article VI of the Constitution of the United States.

VII

On July 16, 1970, the Attorney General wrote (Exhibit A, *infra,* pp. 9–12) to the Governor of the State of Arizona explaining the provisions of the Voting Rights Act Amendments of 1970 and seeking an assurance that the state would comply with them. By return letter, dated July 24, 1970 (Exhibit B, *infra,* pp. 12–14), the Attorney General of the State of Arizona indicated that the state would not comply with the provisions of Sections 201 and 302 of the Amended Act.

VIII

Unless restrained by this Court, the State of Arizona, through its agents, will continue to enforce and implement the Arizona constitutional and statutory provisions relating to registration and voting which conflict with the Voting Rights Act of 1965, as amended, and will thereby prevent and interfere with implementation of such Act.

For a Second Cause of Action:

IX

Repeats and realleges paragraphs I–III.

X

Article 7, Section 2 of the Constitution of Arizona and Section 16–101(A)(2) of the Arizona Revised Statutes, provide that as a prerequisite to registration and voting, otherwise qualified citizens must have attained the age of twenty-one years prior to the date of the ensuing general election.

XI

Section 302 of Title III of the Voting Rights Act of 1965, as amended, provides that no citizen of the United States who is otherwise qualified to vote in any state or political subdivision in any primary or election shall be denied the right to vote with respect to any primary or election held on or after January 1, 1971, on account of age if such citizen is eighteen years of age or older.

XII

The continued enforcement of the age requirements for registration and voting contained in the constitution and statute of the State of Arizona directly conflicts with Section 302 of the Voting Rights Act of 1965, as amended, and is thus unlawful under Article VI of the Constitution of the United States.

XIII

Repeats and realleges paragraphs VII and VIII.

Plaintiff, the United States, requests that this Court issue a declaratory judgment that:

(a) Sections 16–101(A) (4) and (5) of the Arizona

Revised Statutes are unenforceable until August 6, 1975, because they are suspended by Section 201 of the Voting Rights Act of 1965, as amended; and that

(b) Article 7, Section 2 of the Constitution of Arizona and Section 16–101(a)(2) of the Arizona Revised Statutes are unforceable to the extent they conflict with Section 302 of the Voting Rights Act of 1965, as amended.

Plaintiff further requests that this Court

(1) Enjoin the State of Arizona and its agents from:

(a) Enforcing Sections 16–101(A) (4) and (5) of the Arizona Revised Statutes until August 6, 1975;

(b) Enforcing the voting age provisions in the constitution and statute of the State of Arizona to the extent that such provisions are inconsistent with Section 302 of the Voting Rights Act of 1965, as amended; and

(2) Direct the State of Arizona and its agents to adopt whatever procedures may be necessary to bring the State of Arizona into full and prompt compliance with Sections 201 and 302 of the Voting Rights Act of 1965, as amended; and

(3) Grant such other relief as the interest of justice may require.

JOHN N. MITCHELL,
Attorney General.
ERWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

APPENDIXES

EXHIBIT A

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 16, 1970.

Hon. JOHN R. WILLIAMS,
Governor of Arizona,
Phoenix, Ariz.

DEAR GOVERNOR WILLIAMS: On June 22, 1970, the Voting Rights Act Amendments of 1970, Public Law 91-285, were signed by the President. I am writing in order to bring to your attention the major provisions of the new law and to request your cooperation in implementing it.

The 1970 Amendments extend for five years the period of coverage of basic provisions of the Voting Rights Act of 1965 and broaden somewhat the coverage formula of the Act; suspend until August 6, 1975, the use of literacy and similar tests in any state or county not subject to suspension under section 4(a) of the 1965 Act; eliminate durational residency requirements as a precondition for voting for President and Vice President and prescribe uniform standards regarding absentee registration and absentee voting in presidential elections; and lower to 18 the minimum age for voting in all elections. A copy of the Voting Rights Act Amendments and a section-by-section analysis of the statute are enclosed.

As you know, Yuma County is presently subject, on the basis of section 4(a) of the Voting Rights Act, to suspension of literacy and similar tests. Please note that among the provisions continued by the 1970 law

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is section 5 which requires covered counties to submit changes in voting qualifications or procedures to the Attorney General or seek a declaratory judgment in the District Court for the District of Columbia before the new standards or procedures may be implemented. In order to insure that any voting changes adopted by the state or the covered county is given full attention by the Attorney General, we suggest that (1) the new enactments be submitted promptly after their adoption, (2) only those changes dealing with voting procedures and qualifications be submitted, (3) the changes be submitted only after they are fully enacted and (4) any available supporting data be submitted with the change.

The other counties of your state are not now subject to suspension of tests pursuant to section 4(a). However, by virtue of another provision, section 201 of the Voting Rights Act as amended, the literacy requirement imposed by state law (Ariz. Rev. Stat., § 16–1101.) is suspended until August 6, 1975, with respect to the other counties. (It should be noted that section 201 does not make applicable to the latter counties the pre-clearance provisions of section 5.) The prohibition set forth in section 201 took effect upon enactment, i.e., on June 22, 1970. Under section 203, it is my responsibility to take all steps necessary to secure compliance with the prohibition against the use of literacy tests.

Title III, which reduces voting age to 18, is to take effect with respect to any election or primary held on or after January 1, 1971. The statute does not specify when persons 18 and over who are not presently eligible should be allowed to register. However, based upon normal rules of construction, it is my view that each state must afford such individuals a reason-

able opportunity to register so as to be eligible to vote in any primary or election held during 1971.

According to my information, existing law in your state does not permit persons to vote until they are 21 years of age. Under the supremacy clause of the United States Constitution, the present inconsistent provision of state law is superseded.

A prompt determination by each state of the registration and election procedures it will follow for all elections after January 1, 1971, seems essential so that appropriate arrangements can be made. Moreover, you will note that by section 303 of the new statute I am "authorized" and "directed" by Congress to institute legal proceedings necessary to implement Title III.

Accordingly, I request that you review this matter with other state officials and advise me of the instructions regarding implementation of Title III which your state will distribute to registrars and election officials. In my view, such instructions should include a clear statement that persons who will be 18 years of age or over at the time of any primary or election held on or after January 1, 1971, shall be eligible to register for and vote at such election, notwithstanding any contrary provision of state law.

The provision regarding residency requirements, section 202, relates only to voting for President and Vice President and does not affect requirements in regard to congressional or state and local elections. The section concerning residency and absentee registration and balloting contemplates express changes in state law, unless present state laws are no more restrictive than the standards prescribed by the new statute. I suggest that the requirements of section 202, particularly those as to absentee voting and absentee registration, be carefully reviewed.

In conclusion, let me request your cooperation in regard to prompt and effective implementation of the reforms prescribed by Congress. So that this Department may meet its enforcement responsibilities, I ask that you advise me at your earliest convenience of the steps to be taken by your state to carry out the above-described provisions of the Voting Rights Act as amended. Because of the urgency involved it will be necessary for us to assume that, unless we receive a positive response by August 3, 1970, your state does not intend to comply fully with the new statute. In any such case, we will take appropriate action to effectuate the congressional mandate.

If you have any inquiries regarding the Voting Rights Act as amended or if there is any other way that we can be of assistance, please communicate directly with Jerris Leonard, Assistant Attorney General, Civil Rights Division.

Thank you for your cooperation.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

EXHIBIT B

DEPARTMENT OF LAW,
OFFICE OF THE ATTORNEY GENERAL,
Phoenix, Ariz., July 24, 1970.

Re: Interpretation of Voting Rights Act Amendments of 1970 (Public Law 91-285).

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

Dear General Mitchell: Since the President signed the Voting Rights Act Amendments of 1970 (Public

Law 91-285), this office has been reviewing this new law as it relates to the Arizona Constitution and statutes. We have had meetings with the County Attorneys, and have discussed the matter with the legislative leadership of Arizona, as well as the Governor's office. Your letter to the Governor of July 16, 1970, brought matters to a head, and this letter reflects the consensus conclusions of the appropriate officials of the State of Arizona.

First, the easy part. The State of Arizona will conform its laws and practices as soon as possible, and, in any event, before the advent of the next presidential election, to the federal standards set out in the above referenced Act with regard to voting for President and Vice President. We now provide for most of the procedures, but some changes in state law will be necessitated as regards the time factors. We will prepare the necessary amendments for the next session of our Legislature, commencing in January, 1971, and contemplate no problem in conforming Arizona's law to the federal standards.

Now, the more difficult decision. After considerable deliberation, it is the consensus of the state officials of Arizona that we must resist the efforts of the Congress, by legislative fiat, to abrogate our long standing requirements of literacy in the English language and of the attainment of 21 years of age as prerequisites for voting in Arizona. There is general agreement that a serious question of the constitutionality of the action of Congress in these two instances exists, and must be tested in the federal courts.

I would therefore request, on behalf of the State of Arizona, that you institute, pursuant to both Section 203 and Section 303 of the Act, appropriate proceedings in the United States District Court for the District of Arizona to enforce compliance. We will, of

course, immediately respond to any Order of said Court in the premises.

One final item should be mentioned. The lawyers of our office, bolstered by at least some hearsay information from Department of Justice sources, have assumed that, until the questioned sections of the Act have been tested in some appropriate federal forum, there was no exposure to the criminal sanctions imposed by Sections 204 and 303(b) of the Act. If this information is not correct, please advise immediately, so we can take appropriate action to protect our public officials and volunteer registration people from this risk.

Our office will cooperate in any way possible to expeditiously determine this serious question of federal-state responsibility and jurisdiction. If you have any questions concerning our position, or if we can furnish you any additional information, please contact me at your earliest convenience.

Thanking you in advance for your courtesies in this matter, I remain,

Sincerely yours,

GARY K. NELSON,
The Attorney General.

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MOTION FOR INTERIM RELIEF

The United States respectfully moves the Court, for the reasons stated in the accompanying brief, to enter an interim order temporarily enjoining the defendant and its agents from enforcing the literacy test provided for in Sections 16–101(A)(4) and (5) of the Arizona Revised Statutes and directing the defendant and its agents to permit illiterate, but otherwise qualified persons to register provisionally during a period of at least three weeks, so that such persons may vote in the November 3, 1970 general election if the Court decides this case in favor of the United States prior to such date.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

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MOTION FOR EXPEDITED CONSIDERATION

The United States respectfully moves the Court to expedite consideration of the case as follows:

(a) By requiring any response to the attached motion for leave to file and motion for interim relief to be submitted by August 31, 1970; and

(b) By establishing a briefing schedule that will permit the case to be heard at the October argument session, if the Court grants leave to file when it reconvenes in October. The United States will file its brief on the merits by September 10, and suggests that the defendant's brief on the merits should be filed by October 5.

JOHN N. MITCHELL,
Attorney General.
IRWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

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